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**AUG 24 2004**

**OFFICE OF PETITIONS**

In re Application of	:	
Georges Marcel Victor Thielen, et al.	:	
Application No. 10/084,890	:	DECISION ON PETITIONS
Filed: February 27, 2002	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. DN2001057	:	AND UNDER 37 CFR 1.78(a)(6)

This is a decision on the petitions under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed May 3, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §§120 and 119(e) for the benefit of the prior-filed applications set forth in the concurrently filed amendment.

The petitions are **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional where there is a question whether the delay was unintentional.

The petition fails to comply with item (1) above.

37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications. The relationship between the applications is whether the subject application is a continuation, divisional, or continuation-in-part of a prior-filed nonprovisional application. An example of a proper benefit claim is: "This application is a continuation of Application No. 10/---, filed---." A benefit claim that merely states: "This application claims the benefit of Application No. 10/---, filed---," does not comply with 37 CFR 1.78(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated. Also, the status of each nonprovisional parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. See Manual of Patent Examining Procedure, 8th ed., (August 2001), Section 201.11, Reference to First Application. The amendment filed fails to comply with the provisions of 37 CFR 1.78(a)(2)(i) and is therefore unacceptable.

Accordingly, before the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) can be granted, a renewed petition and a substitute amendment<sup>a[1]</sup> to correct the above matter is required.

Further, it is noted that a claim for priority of provisional Application No. 60/276,588 appears in the specification submitted on filing. However, petitioner did not include the claim for priority of this provisional application in the amendment filed April 30, 2004. For the record, petitioner needs to clarify whether or not a claim for priority of provisional Application No. 60/276,588 is still desired and if so, the substitute amendment filed in response to this decision should also include the claim for priority of provisional Application No. 60/276,588. Applicant is reminded that if it is stated that the claim for priority of this provisional application is no longer desired, the rights thereto would be forever lost.

Further correspondence with respect to this matter should be addressed as follows:

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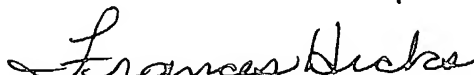
<sup>a[1]</sup> See 37 CFR 1.121.

**By fax:** (703) 872-9306  
ATTN: Office of Petitions

Any questions concerning this matter may be directed to Andrea Smith at (703) 308-6711<sup>b[2]</sup>.



Andrea Smith  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy



Frances Hicks  
Lead Petitions Examiner

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<sup>b[2]</sup> Effective September 27, 2004, the telephone number will be 571-272-3226.